

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**ASHTON PLASTIC PRODUCTS, INC.,  
Plaintiff,**

**v.**

**FUSITE CORPORATION,  
Defendant.**

**Civil Action No. C-1-02-529**

**(JUDGE DLOTT)**

**(Magistrate Judge Sherman)**

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**DEFENDANT FUSITE CORPORATION'S REPLY IN SUPPORT OF ITS  
MOTION FOR SUMMARY JUDGMENT IN FAVOR OF FUSITE AND  
REQUEST FOR DISMISSAL**

On July 29, 2004, this Court entered its ORDER granting Fusite Corporation's Motion to Alter Judgment. The court vacated its December 4, 2003 order dismissing this action, and ordered plaintiff to respond to defendant's motion for summary judgment within thirty days. Plaintiff has now filed its memorandum in response to the order, declining to file a response to Fusite's motion for summary judgment as it was ordered to do.

Wherefore, Defendant Fusite Corporation respectfully requests, pursuant to its motions under Federal Rules of Civil Procedure 41(b) and 56, that the Court enter judgment dismissing the Amended Complaint of Plaintiff Ashton Plastic Products, Inc., with prejudice, and enter judgment in favor of Fusite Corporation.

**MEMORANDUM**

Plaintiff was ordered, pursuant to the Court's July 29, 2004 Order, to respond to Fusite's Motion for Summary Judgment or face dismissal of its claims with prejudice. In light of Ashton's August 25, 2004 response indicating, in essence, that it has no response to Fusite's Motion, there is no genuine issue as to any material fact, and Defendant Fusite Corporation is

entitled to dismissal of Ashton's claims with prejudice or, in the alternative, judgment as a matter of law.

Accordingly, Defendant Fusite Corporation asks that pursuant to Fusite's Motion for Summary Judgment and the Court's July 29, 2004 Order, the Court dismiss Plaintiff's claims with prejudice, and enter Judgment in favor of Defendant Fusite Corporation.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing DEFENDANT FUSITE CORPORATION'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT IN FAVOR OF FUSITE AND REQUEST FOR DISMISSAL has been served upon the following persons by electronic means using the court's CM/ECF system if available, or else by ordinary United States mail, postage prepaid, or as otherwise indicated below, this 31st day of August, 2004.

W.B. Markovits, Esq.

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/s/ Mark E. Elsener

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